IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6989 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ATULBHAI M CHAUDHARY
Versus
MANAGING DIRECTOR, MEHSANA DISTRICT TELEBIYA UTPADAK SAHAKARI SANGH LIMITED

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Appearance :

Mr. A.S. Supehia for Mr. I.S. Supehia for the petitioner

Mr.Rakesh R. Patel for Mr. Dhaval C. Dave for the respondents

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 22/06/2007

ORAL JUDGMENT

1 This petition under Article 226 of the Constitution of India is filed by the petitioner, who was serving as Assistant Executive with Mehsana District Telebiya Utpadak Sahakari Sangh Limited, which later on came under the management and control of National Dairy Development Board, Anand.

2 It is the case of the petitioner that the petitioner came to be dismissed from service by order dated 4.10.1997 after holding a departmental enquiry for the charges levelled against him as per charge sheet dated 15.5.1997. The main charges against the petitioner-delinquent are pertaining to not resuming duties at the place of transfer and remained absent without permission of the competent authority unauthorizedly. It is also alleged that the petitioner had defied lawful instructions of the authority and shown wilfull insubordination, disobedience and remained negligent in performance of duties. Thus, according to the authority, the petitioner violated Rule Nos. 24.8, 24.9. 24.11 and 24.13 of the Conduct, Discipline and Appeal Rules 1994.

3 In the departmental enquiry, the petitioner made valiant efforts to put forth his version but, could not convince the Authority and, after considering the report of the Enquiry Officer, the Disciplinary Authority found dismissal as suitable punishment. Thereafter, the petitioner preferred Special Civil Application No.8341 of 1997 before this Court and was relegated to prefer an appeal upon withdrawal of the petition by order dated 19.2.1998. Later on, the appeal also came to be dismissed and the petitioner is before this Court by way of the present petition under Article 226 of the Constitution of India challenging the order of dismissal.

4 Mr. Rakesh Patel, learned counsel for the respondents, raised a preliminary issue that the respondent- Mehsana District Telebiya Utpadak Sahakari Sangh Limited is not an 'Authority' within the meaning of Article 12 of the Constitution of India and, therefore, not amenable to the writ jurisdiction of this Court. He has submitted that respondent No.1 was a registered statutory body under the Gujarat Cooperative Societies Act and the management and control of respondent No.1 came to be taken over by the NDDB. Thus, it is submitted that, when the petitioner has failed to point out characteristics of respondent No.1 to establish that respondent No.1 is an 'Authority' within the meaning of Article 12 of the Constitution of India, no direction can be given to respondent No.1 in a petition under Article 226 of the Constitution of India.

5 Having heard the learned advocates for the parties and on perusal of the record of the case including the pleadings, the only averment is made in this petition in paragraph 2 is that 'Sangh' has been taken over by the NDDB, Anand, as per order dated 20.1.1997 passed by the Registrar, Cooperative Societies, Gujarat State, Gandhinagar'. How respondent No.1 can be brought under the domain of Article 12 of the Constitution of India and amenable to writ jurisdiction of this Court is nowhere averred. No documentary evidence or material is produced on record to show whether respondent No.1 is an 'Authority' within the meaning of Article 12 of the Constitution of India. In Ajay Hasia v. Khalid Mujib Sehravardi, [1981] 1 SCC 722, Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and others, [2002] 5 SCC 111, and Zee Telefilms Limited vs. Union of India, [2005] 4 SCC 649, the Apex Court laid down parameters and criteria to bring an Authority within the

meaning of Article 12 of the Constitution of India. None of the ingredients, as laid down by the Apex Court in the above cases, is reflected either in pleading or submissions of learned counsel for the petitioner.

6 Thus, the petitioner has failed to support his contention that respondent No.1 is an 'Authority' within the meaning of Article 12 of the Constitution of India and is amenable to the writ jurisdiction of this Court.

7 In the result, this petition is rejected. Rule is discharged.

(ANANT S. DAVE, J.)

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